

ENTERED

August 02, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

ROBERTO CARDENAS GARZA,
Petitioner

VS.

LORIE DAVIS DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION
Respondent

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CIVIL ACTION NO. M-16-678

ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is Petitioner's application to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2254, which motion had been referred to the Magistrate Court for a Report and Recommendation. On July 18, 2017, the Magistrate Court issued the Report and Recommendation, recommending that Respondent's motion for Summary Judgment (Dkt. Entry No. 19) be granted, that Petitioner's Motion for Summary Judgment (Dkt. Entry No. 24) be denied, and that Petitioner's section 2254 motion be dismissed without prejudice as unexhausted.

Petitioner has responded with a self-styled "Motion to Dismiss Report and Recommendation" (Dkt. No. 28). The Court construes this as objections to the Report and Recommendation. Pursuant to Federal Rule of Civil Procedure 72(b), the Court has conducted a de novo review of the Report and Recommendation to which objections are made. The Court finds that the objections are without merit.

Having reviewed the record as a whole and finding no clear error, the Court adopts the Report and Recommendation in its entirety. Accordingly, Respondent's Motion for Summary Judgment (Dkt. Entry No. 19) is **GRANTED**, Petitioner's Motion for Summary Judgment (Dkt.

Entry No. 24) is **DENIED**, and Petitioner's section 2254 claims are **DISMISSED** without prejudice as unexhausted. A certificate of Appealability is **DENIED**.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 2nd day of August, 2017.

A handwritten signature in black ink, appearing to read "M. Alvarez", is written over a horizontal line.

Micaela Alvarez
United States District Judge